

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re:

Administrative Order 05-2

**Implementation of Case Management/
Electronic Case Files (CM/ECF) System**

Under Bankruptcy Rules 5005(a)(2), 7005, 9011, 9022, 9029, and 9036, courts may establish practices and procedures that permit filing, signing, verifying and serving documents electronically. On October 17, 2005, this court's BANCAP case management system will convert to the federal judiciary's Case Management/Electronic Case Files (CM/ECF) system, which permits files and dockets to be kept and accessed electronically and permits filing or submitting case related documents via the Internet. A registered user is an interested party who has been approved to electronically file papers in this court ("registered user"). An electronic filing is a filing submitted via the Internet by a registered user of CM/ECF in this court ("electronic filing"). A conventional filing is a filing submitted in paper by an interested party ("conventional filing").

To implement CM/ECF in this court, it is **ORDERED** that:

I. GENERAL PROVISIONS

- (A) Effective Date. The clerk will use CM/ECF to maintain all cases, adversary proceedings and miscellaneous proceedings pending, filed or reopened in this court on or after October 17, 2005. Documents filed prior to October 17, 2005, will not be converted to electronic imaged format unless ordered by the court. Except as noted in section I (B), documents filed or submitted in cases or proceedings on or after October 17, 2005, shall be either filed electronically in portable document format ("PDF") by a registered user, or filed in conventional paper format by non-registered users and then converted to PDF by the clerk.
- (B) Documents Excepted from Electronic Filing. Notwithstanding the conversion to CM/ECF on October 17, 2005, the following documents shall be conventionally filed:
 - (1) Involuntary petitions and local form summons;
 - (2) Documents to be filed under seal, including the required local cover

- sheet;
 - (3) Local form applications and supporting documents for withdrawal of unclaimed funds and proposed orders thereon;
 - (4) Notice of deposits of unclaimed funds and small dividends, and accompanying checks;
 - (5) Trial exhibits;
 - (6) Copies of designated items for the record on appeal (*Note: The notice of appeal, designation of record, statement of issues and any related appellate documents will be filed electronically; however, copies of the documents designated for the record on appeal must be printed from the court's official record and provided to the court conventionally because a paper record will still be required for transmission to the district court.*);
 - (7) Miscellaneous proceedings (registration of foreign judgments, contested subpoenas); and
 - (8) Any other documents so designated by the court in subsequent administrative orders or local rules.
- (C) Changes in Case Numbering. For all cases filed on or after October 17, 2005 through December 31, 2005, the case numbering sequence will change to a consecutive case numbering sequence with no numeric divisional designation, beginning with 60001. For example, the first case number assigned in CM/ECF on October 17, 2005, will be 05-60001-BKC (name of assigned judge) regardless of divisional venue. The next case filed regardless of division will be numbered 05-60002-BKC (name of assigned judge); Adversary proceedings will be similarly assigned using 4 digits after the year, e.g., 05-6001.
- On January 1, 2006, the case numbering sequence will revert back to a consecutive case numbering sequence with no numeric divisional designation, beginning with 10001. Adversary proceedings will be similarly assigned using 4 digits after the year, e.g., 06-1001.
- (D) Divisional Office Designation Required. All papers filed subsequent to the initial petition or complaint must include the assigned division (i.e., Miami, Ft. Lauderdale, West Palm Beach or North Dade Chapter 13) in the court caption style centered at the top of the first page (e.g.; "United States Bankruptcy Court, Southern District of Florida, Ft. Lauderdale Division").
- (E) Retention of Original Paper Documents Filed Conventionally with the Court. Pending issuance of specific guidelines by the Judicial Conference of the United States and an administrative order or local rule of the court adopting same, the clerk shall retain all conventional filings. Upon the administrative closing of the case, the paper documents will be sent to the Federal Records Center for archiving as required by the policy in effect at that time.

- (F) Official Case Record. Regardless of whether an interested party files the document electronically or files it conventionally and the clerk converts it to an electronic document, the resulting electronic document and docket entry are deemed to be the court's official record under Bankruptcy Rule 5003. Deletions of electronic docket entries or PDF images are permitted only with leave of court. The clerk will review documents filed electronically and, when appropriate, will issue a notice of electronic filing deficiency under Local Rule 5005-1(C).
- (G) Method of Payment for Registered Users. Registered users (other than case trustees and government agencies specifically exempted by the court) must use the CM/ECF credit card module to pay fees and make other required deposits for documents filed in CM/ECF. The registered user must pay any and all fees for CM/ECF transactions on the date filed. Failing to do so will cause the registered user's electronic filing privileges to be suspended and may result in a bankruptcy petition being dismissed, a document being stricken or sanctions being imposed. Filing fees paid in error will only be refunded upon motion and order of the court except when a filing fee is an unintended duplicate payment caused by an error in the court's CM/ECF system or Internet credit card program.

II. ACCESS TO ELECTRONIC FILING

Initially, access to electronic filing in this district is required, encouraged or prohibited as follows:

- (A) All trustees assigned to cases in this district and attorneys appearing in cases in this district under Local Rules 2090-1(A) and 2090-1(B)(3), except for government attorneys appearing for those limited purposes under Local Rule 2090-1(B)(1), must complete court approved CM/ECF training on or before June 1, 2006, to become registered users and file documents using CM/ECF.
- (B) Attorneys seeking to appear *pro hac vice* under Local Rule 2090-1(B)(2), must conventionally file the local form "Motion to Appear Pro Hac Vice" accompanied by the local form "Order Admitting Attorney Pro Hac Vice." If the court grants a *pro hac vice* appearance, the attorney may apply to become a registered user in this district with full filing privileges. The court grants *pro hac vice* appearances on a case by case basis, and the court must grant the conventionally filed local form motion before that attorney may enter an electronic appearance in that case.
- (C) The court encourages attorneys appearing under Local Rule 2090-1(B)(1) to become registered users with limited attorney filing privileges ("limited filer") permitting them to electronically file notices of appearance, change of address, requests for service of notices, proofs of claim, notices of transferred claims, withdrawal of claims, reaffirmation agreements, and chapter 11 ballots and other papers as authorized by the court.

- (D) Currently, *pro se* parties and bankruptcy petition preparers are ineligible to use CM/ECF to file documents electronically. However, creditors without counsel may become registered users with limited creditor filing privileges permitting them to electronically file notices of appearance, change of address, requests for service of notices, proofs of claim, notices of transferred claims, withdrawal of claims, responses, reaffirmation agreements and chapter 11 ballots and other papers as authorized by the court.
- (E) Pursuant to subsequent administrative order or local rule, the court may permit or require other classes or groups to become registered users.

III. TRAINING AND OTHER REGISTERED USER REQUIREMENTS

- (A) The clerk will designate the level of filing privileges to be assigned the registered user depending upon the registered user's status as trustee, attorney with full filing privileges, limited filer or any other designation that becomes necessary. Registered users must complete the training programs established by the clerk and submit the applicable local form "Acknowledgment of Responsibility and Request for Login and Password" for live access to CM/ECF.
- (B) Registered users with full filing privileges must obtain and maintain a PACER account.
- (C) Registered users must use updated anti-virus software on all personal computers used to access CM/ECF. The filing party must check for the presence of any malicious software before submitting electronic documents to the court.
- (D) The registered user must provide the clerk with an e-mail address for electronic service. To change this address, the registered user must notify the clerk in writing via e-mail to the CM/ECF Help Desk at CMECF_Support@flsb.uscourts.gov. The e-mail must list each case in which the primary e-mail address should be changed. Upon receipt of the e-mail, the clerk will process the change(s) and send a reply confirmation back to the registered user. The registered user must verify timely that the clerk has changed the e-mail address in each affected case. If the registered user is registered with the Bankruptcy Noticing Center (BNC) to receive electronic service, the registered user must notify the BNC directly that the e-mail address has changed.
- (E) The court may suspend or cancel a registered user's access to CM/ECF and may require the registered user to complete additional training to reactivate filing privileges.

IV. SIGNING AND VERIFICATION OF DOCUMENTS

(A) Login and Password.

- (1) The clerk will assign a unique login and an initial password to each registered user which is that registered user's signature on electronic documents for all purposes, including those under Bankruptcy Rule 9011, 28 U.S.C. § 1746, and this court's local rules. A registered user's electronic signature has the same force and effect as if the registered user signed a paper copy of the document being filed. If a registered user authorizes one or more employees to use the login and password or if the registered user's login and password is used without authorization, the registered user is responsible for such use and, in the event of unauthorized use, must notify the clerk and immediately take the necessary steps to deactivate access.
- (2) Attorneys shall not share an assigned login and password with other attorneys for the purpose of having documents filed in CM/ECF. The typewritten name of the filing registered user must appear on the document and match the login name of that registered user's ECF account.
- (3) The attorney certification required by Local Rule 9011-4(B) is abrogated for registered users appearing in this court under Local Rule 2090-1(A), because they will have previously signed a "CM/ECF Full Filing Attorney Agreement" which contains the same certification requirements.

(B) Original Signatures Required.

- (1) General Provisions. Before filing any document requiring a signature in CM/ECF, the registered user must obtain the party or parties' original signature(s) on a paper copy of the document. The registered user must keep these signed, original documents for the time provided by section IV (C) of this Order. The registered user must advise the signing party that the registered user will file the document electronically and that the paper version is an exact copy of the electronic document with the sole exception that the paper version will contain original signatures. The registered user must type or print the signer's name either above or below the signature line on the electronic document. The typed or printed name on the filed document is the registered user's representation that the document was signed in original by that party, regardless of whether or not /s/, /s/, or s/ is added near the typed name. If the document contains a scanned image of a signature, the typed name must appear under the signature.

- (2) Local Form “Declaration” Required. Registered users must file the local form “Declaration Under Penalty of Perjury to Accompany Petitions, Schedules and Statements Filed Electronically” (“Declaration”) with each initial petition or amended petition. The “Declaration” must also be filed with each initial or amended schedule and statement of financial affairs filed separately from the initial petition unless these documents contain an imaged signature of the debtor. The registered user filing the “Declaration” must keep the signed original for the time provided by section IV (C) of this Order. Failing to file this form will result in immediate dismissal of the case.
- (3) Verification of Debtor’s Social Security Number. In individual debtor cases filed in CM/ECF, the registered user must obtain the debtor(s)’ original signature(s) on a paper copy of the local form “Statement of Social Security Number(s)” (including any amendments) and must keep the original signed document for the time provided by section IV (C) of this Order. The “Statement of Social Security Number” containing the debtor’s original signature must be scanned and converted to PDF format and electronically filed with the petition as a separate docket entry. In accordance with the federal judiciary’s privacy policy, the PDF image of this document will not be available for public viewing. The registered user must verify that the social security number provided on the local form is the same number entered in CM/ECF and appearing on the § 341 notice of commencement of case to ensure correct numbers are reflected in the court’s records.
- (C) Retention of Original Signed Documents by Registered Users. Documents that are electronically filed and require original signatures other than that of the registered user must be maintained in paper form at least five years from the date of discharge of the debtor, dismissal of the case or final resolution of all appeals pending in the case, whichever is later. This retention neither affects nor replaces any other retention period required by other laws or rules of procedure. The court may require the production of original documents for review by the court, a trustee, the U.S. trustee, or any interested party.
- (D) Effect of Electronically Filed Document. Any document signed, then either filed electronically or filed conventionally, then converted to an electronic document by the clerk, has the same force and effect as if the individual signed a paper copy of the document being filed. Verified documents filed electronically shall be treated, for all purposes (both civil and criminal, including penalties for perjury), the same as though signed or subscribed.

V. ELECTRONIC SERVICE AND APPEARANCES

- (A) Electronic Service. Registered users (1) waive the right to receive notice by first class mail and consent to receive notice electronically via the CM/ECF generated Notice of Electronic Filing (NEF); and (2) waive the right to service by personal service or first class mail and consent to electronic service via the NEF, except with regard to service of a summons and complaint under Bankruptcy Rule 7004. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment under Bankruptcy Rule 9022. Consent to electronic service becomes effective in a particular case when a registered user files a document that generates an NEF (except a proof of claim).

To reduce noticing costs and unnecessary duplication of service, registered users who are served with an NEF will not receive duplicate notice served via the BNC ***except for the § 341 notice of commencement of case.*** This elimination of duplicate noticing will also apply to those registered users who have separately entered into an agreement for e-mail or fax service with the BNC.

- (B) Electronic Appearances and Access to Electronic Dockets and Case Documents.

Filing a document in CM/ECF for the first time (except for filing a proof of claim) is that registered user's electronic notice of appearance in that case or proceeding only. A registered user will not receive electronic notices in any case or proceeding until the registered user formally enters an electronic notice of appearance. Every registered user who has made an electronic appearance in a specific case will automatically be sent an NEF (or Daily Summary Report-DSR) for each electronic entry in the case to the current e-mail address provided to the court. If a PDF document is attached to that NEF, the registered user and any other e-mail recipients associated with that registered user's log-in will be able to view the document once at no charge for a period of 15 days from the date the document is entered on the docket. Subsequent access to that document or any other docketed items in CM/ECF cases will be available through PACER which provides electronic access to publicly filed electronic documents at the published fees. Parties who are not registered users may access electronic case records free of charge at the public computer terminals in each divisional clerk's office. In addition, non registered parties in a case may register to receive notices sent by the clerk electronically through the BNC system in lieu of regular mail service.

A registered user seeking to withdraw an electronic appearance in a specific case must comply with Local Rule 2091-1.

- (C) Service and Certificate of Service.

- (1) The NEF reflects the names and e-mail addresses of those electronic filers to whom electronic service was sent through CM/ECF. The NEF is not a

substitute for submission of a certificate of service by a party required to serve a document. The party filer or other party directed by the court must serve all necessary parties and file a certificate of service as required by the local rules. Non-registered users or registered users who have yet to appear electronically in a specific case must be served by conventional paper service under the federal rules and this court's local rules. The certificate of service should indicate who was served and the manner and date of service (e.g., "The following parties were served by U.S. Mail on Date ; the following parties were served via the Notice of Electronic Filing on Date ").

Note: Chapter 7 and 13 trustees are automatically added at case initiation and therefore always will receive service via the NEF; thus conventional filers need not serve a paper copy of a document on a trustee.

- (2) The three additional days to respond to service by mail pursuant to Bankruptcy Rule 9006(f) shall apply to electronic service.

VI. ELECTRONIC FILING DATE AND TECHNICAL DIFFICULTIES

- (A) Electronic Filing Date. Unless the court orders otherwise, a document filed in CM/ECF is deemed filed on the date in which the electronic transmission of the document is completed by 11:59 p.m. Eastern Standard time (or Eastern Daylight Savings, whichever is in place at the time the filing is effected). An electronic filing is confirmed as complete when the NEF is generated. The date and time reflected on the NEF as the "entered on" date is the date the court received the electronic filing. A document filed conventionally, then converted to electronic format by the clerk, is deemed filed on the date stamped by the clerk on the paper document, not the date it is converted to electronic format. Filing a document electronically alters no filing deadline for that document. The NEF for conventionally filed paper documents will reflect both the date the party filed the paper document and the date the clerk entered the document on the electronic docket.
- (B) Technical Difficulties. Parties are strongly encouraged to file documents electronically during normal business hours, in case a technical problem is encountered. If a party is unable to file electronically as a result of a technical difficulty with the court's system, the party must contact the clerk's office CM/ECF Help Desk at the telephone number posted on the court's website during normal business hours. If required to meet a filing deadline, a registered user is permitted to conventionally file a paper documents only when the CM/ECF system is inaccessible or the registered user's computer system is inoperable. A registered user whose filing is made untimely as the result of a technical failure may seek, or the court on its own motion may grant, appropriate relief. No filing deadline shall be deemed to be extended due to technical problems except by

court order.

The clerk shall, whenever possible, post notice of any scheduled maintenance or technical problems which renders the system incapable of receiving electronic filings. Registered users are expected to monitor these postings and take any required action necessary to ensure the timely filing of documents.

VII. CHANGES TO CURRENT FILING REQUIREMENTS AND PROCEDURES

- (A) Number of Copies and Courtesy Copies Required to be Submitted. Documents filed electronically or conventionally, including petitions, notices of appeal and other documents for which additional copies are currently required, need no additional paper copies, unless otherwise directed by the court or clerk or as set forth in section VII (F) of this order. If a party desires a conformed (date-stamped) copy of a document filed conventionally, one copy of the document should accompany the original together with a sufficient sized stamped and addressed envelope.

Notwithstanding the above, debtors who are publicly traded entities are, contemporaneously with the filing of a petition, required to serve a copy of the petition, schedules and statements on the Securities & Exchange Commission at the designated address contained in the “Clerk’s Instructions for Chapter 11 Cases.”

- (B) Format Required for Submitting Electronic Documents and Attachments to Documents and Proofs of Claim. The format requirements contained in the clerk’s CM/ECF “External User’s Guide” apply to all electronic or conventionally filed or submitted documents and, where applicable, supersede existing local rule requirements. Filers shall not attach as an exhibit any document already filed and docketed in the case or proceeding. Instead, the filer must reference the document in the text of the motion and cite to its electronic docket number. Attachments to proofs of claim must comply with Local Rule 3001-1(A)(3).

- (C) Procedures for Obtaining and Serving Notices of Hearing.

- (1) Preparation of Notice of Hearing by Clerk. The court no longer requires a local form notice of hearing to accompany electronically or conventionally filed motions and other requests for which a hearing is required. As required by Local Rule 9073-1(D), the motion must still contain a certification that movant’s attorney has contacted opposing counsel in an attempt to resolve the matter before filing the motion. The clerk will prepare a notice of hearing and return it to the party required to serve the notice under the federal or local rules, either electronically via the NEF or by mail from the BNC, depending on whether counsel for the movant is a registered user who has filed an electronic notice of appearance in the case

or proceeding. The party required to serve the notice of hearing must file the local form "Certificate of Service of Notice of Hearing and Compliance with Local Rule 9073-1(D)" reflecting dates and manner of service on all required parties. The local form "Certificate of Contested Matter" will be amended to reflect these new procedures and the current local forms "Notice of Hearing" (LF-46A) and "Notice of Hearing on at Least 16 Days Notice - Responsive Papers Required" (LF-46B) are abrogated. Any local rule requiring the filing of these forms is superseded by this order. This provision does not apply to certain chapter 13 matters which will be self calendared as set forth in section (2) below.

- (2) Self-Calendaring of Certain Chapter 13 Matters. Chapter 13 trustees and attorneys appearing on behalf of parties in chapter 13 cases will be permitted to self-calendar all non-emergency matters which can be heard on a regular chapter 13 motion/confirmation calendar. These dates will be published on the court's website and on each chapter 13 trustee's website. Registered users and conventional filers must comply with this court's "Chapter 13 Self-Calendaring Procedure." If the self-calendaring option is used to schedule a hearing on a motion for relief from stay, and the next available chapter 13 hearing date is scheduled beyond the 30 day provision set forth in 11 U.S.C. § 362(e), the movant will be deemed to have consented to voluntarily extending this deadline to the date of the next available chapter 13 calendar.
- (D) Emergency, Late and Expedited Filings - Courtesy Copies and Local Form Red Cover Sheet Required. Under Administrative Order 04-11, contemporaneously with the electronic or conventional filing of an emergency motion, a chapter 11 "first-day" motion pursuant to Local Rule 9013-(F) or any paper to be considered by the court within 48 hours of a hearing, a "courtesy" paper copy of the document, accompanied by a local form "Red Sheet" cover sheet (printed on red paper) and, if applicable, the local form "Notice of Late Filing of Paper Pursuant to Local Rule 5005-1(F)(3)", must be delivered to the clerk's office where the judge assigned to the case is chambered. A paper copy of any motion filed pursuant to Local Rule 9013-(F) must also be delivered to the Office of the U.S. Trustee.
- (E) Summons and Pretrial Order in Adversary Proceedings. Each judge's local form pretrial scheduling order has been consolidated into one version for all judges. The plaintiff will no longer submit local forms "Summons and Notice of Pretrial" or "Order Setting Filing and Disclosure Requirements" in an adversary proceeding. Instead the clerk will generate and docket these forms electronically and transmit them to the plaintiff who must serve them together with the complaint on all defendants in accordance with the federal and local rules. The electronic summons generated by the clerk is a valid summons, signed, sealed and issued by the clerk.

Note: The court's new ***"Guidelines for Preparing, Submitting and Serving Orders"*** which replace the "Guidelines for Preparing Orders" contain a list of other local form orders which will no longer be required to be submitted by the parties and will be generated by the court.

- (F) Submitting Proposed Orders Electronically. To ensure that only orders and judgments entered by the court appear on the public docket, proposed orders and judgments shall be submitted to the judge in electronic format using the E-Orders program in CM/ECF, or in word processing format to an electronic mailbox designated by the court in accordance with the court's "Guidelines for Preparing, Submitting and Serving Orders." Although conventional paper filers will not submit proposed orders electronically, they will be required to adhere to certain new format requirements set forth in the "Guidelines."

Notwithstanding this provision, proposed orders submitted pursuant to Local Rule 5005-1(G)(1)(b), which requires parties to bring proposed orders to court hearings, shall continue to be brought to the hearings and submitted conventionally. Conventionally signed orders will be converted to electronic format and docketed by the clerk.

- (G) Jointly Administered Cases. The clerk will no longer assign one judge to related cases as provided in Local Rule 1015-1(A). Instead, a motion for joint administration or transfer, whichever is applicable, shall be filed by the party seeking joint administration and/or assignment of related cases to one judge.
- (H) Chapter 11 Ballots. The clerk will no longer keep a separate register of ballots. Ballots shall be filed electronically by registered users or conventionally and entered on the electronic docket by the clerk. Ballots will appear on the docket on the date filed. The CM/ECF system will generate a ballot summary report of all ballots filed in the case with a hyperlink to each PDF ballot image.

Local Rule 3018-1 which requires customized ballots to be served on each creditor shall remain in effect.

VIII. ENTRY AND SERVICE OF COURT ORDERS AND JUDGMENTS

The clerk will enter all the court's orders, decrees and judgments in CM/ECF which is the docket entry required of the clerk under Bankruptcy Rules 5003 and 9021. Any order entered electronically without the judge's original signature has the same force and effect as if the judge signed a paper copy of the order and it was entered on the docket conventionally. Orders may also be issued as "text-only" entries on the docket, without an attached document. Such orders are official and binding. Where the clerk is directed to serve notice, transmitting the NEF or, if applicable, service through the BNC or U.S. Mail constitutes the notice required under Bankruptcy Rule 9022. Parties directed to serve notice by the court must file a certificate of service as required under the local rules and section V (C) of this Order.

IX. ELECTRONIC COURT DOCKETS

- (A) Virtual Docket Entries. A virtual document consists entirely of the text contained in the docket entry and includes no text of any other document. The docket entry for a virtual document is fully effective despite the absence of a separate PDF document attached to the docket entry. Only trustees and court staff may enter a virtual docket entry.
- (B) Certification of Electronic Documents. Certified or exemplified copies of documents filed electronically are available from the clerk's office. The fee for copying and certification is provided under the Judicial Conference Bankruptcy Court Miscellaneous Fee Schedule. Fee information is posted on the court's website at www.flsb.uscourts.gov.

This court's local rules, administrative orders, court guidelines, clerk's instructions and local forms will be revised to incorporate the provisions of this Order. The clerk will establish and maintain current information on the court's website regarding CM/ECF registration and training process and all other related information. Participants in cases in this court are responsible for accessing this site and taking any necessary or required steps to remain informed about using CM/ECF, including how to file and retrieve information in CM/ECF.

Failing to comply with any court requirement may result in the imposition of sanctions, including striking documents filed with the court, dismissing proceedings, dismissing or converting cases, or any other appropriate sanction.

ORDERED in the Southern District of Florida on July 15, 2005.

/s
Robert A. Mark
Chief United States Bankruptcy Judge